IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.963 OF 2005

IN

SUIT NO.1649 OF 2005

Smt.Jayashree Ashok Goregaonkar ...Plaintiff

Versus

Kanta Chandrakant Mhatre & Ors. ...Defendants

.....

Mr.R.S.Apte with Mr.N.R.Bubna for Plaintiff.

Mr.Amit Borkar i/b M/s.Vinod Mistry & Co. for Defendants 1 to 4.

Mr.Nitin Mulye i/b Mr.Girish Godbole for Defendant No.13.

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CORAM: A.M.KHANWILKAR, J.

OCTOBER 4, 2005.

P.C.

1. Heard Counsel for the parties. By this Chamber Summons, Defendants 1 to 4 pray that the Plaint be rejected on the ground that it does not disclose any cause of action as also being barred

by Law of Limitation in terms of Order VII Rule 11(a) and (d) of the Code of Civil Procedure (hereinafter referred to as 'the Code').

2. Briefly stated, the present Suit is for partition filed by the daughter-in-law of Revati Goregaonkar. The genealogy of the family, which is agreed between the parties, is thus:

STATUS OF HEIRS

LATE GANPATRAO K.MHATRE - SARASWATI
EXPIRED : 30/04/1947

(1)	(2)	(3)	(4)	(5)	(6)
Maltibai P.Paralkar Exp:1982	**Shamrao** Expired	**Chandrakant** Exp: 1990 ! Kanta (w) (D:1)	**Sumati Naik** Exp : 1936	**Revati Goregaonkar** Exp : 1984	**Suryakant** Exp:1997 !Sulochana (w) (D:4)

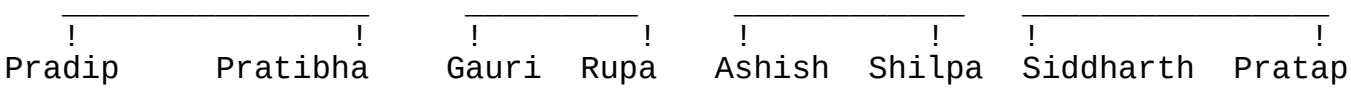
(1) Maltibai P.Paralkar (Daughter)

Vasant (D:5)	Madhav (D:6)	Leela (D:7)
		Radhika

Sudhir	Vishwas	Shree

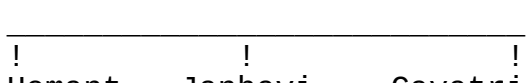
(2) Shamrao (Son)

Usha	Sudha	Lata	Shashikant

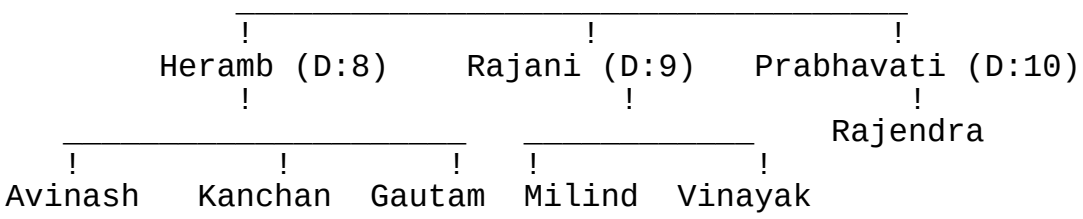


(3) Chandrakant (Son)

Kunda (D:2)

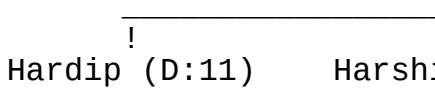


(4) Sumati Naik (Daughter)



(5) Revati N.Goregaonkar (Daughter 3)

Ashok (Exp) - Jayashree (wife)
Plff.



(6) Suryakant

Meera (D:4)

Anand

3. The Plaintiff Jayashree claims through her husband Ashok, who in turn, claims through her

mother Revati. According to the Plaintiff, Revati had share in the property, which came to the share of Saraswati, who expired on 8th August 1948. The Plaintiff's case is that Saraswati had 1/3rd share and as a consequence, the Plaintiff will get 1/27th share in the said property.

4. According to the Defendants, however, the Plaintiff can have no share in the property which was originally owned and possessed by late Ganpatrao K.Mhatre. After his death on 30th April 1947, the property devolved upon his surviving sons. Indeed, Saraswati being widow of Late Ganpatrao Mhatre had widow's estate in the property left behind by Ganpatrao Mhatre. However, Saraswati expired on 8th August 1948. After the death of Saraswati, the limited interest enjoyed by her namely widow's estate in the property, was reverted to the next heirs of Late Ganpatrao Mhatre. The next heirs of Ganpatrao Mhatre namely Shamrao, Chandrakant and Suryakant have effected partition in the year 1952 of the entire property, which document is a registered partition deed and has been accepted by the Plaintiff. Relying on the

above fact situation, according to the Defendants, the Plaintiff will have no subsisting share in the suit property, inasmuch as she was claiming through her husband Ashok, who in turn, was claiming through Revati Goregaonkar. Revati Goregaonkar expired in 1984. On this admitted factual position, in law, according to the Defendants, Plaintiff will have no share in the suit property, for which reason, there is no cause of action to proceed with the present Suit. Reliance is placed on the decision of the Apex Court reported in **A.I.R. 1967 SC 272 in the case of Satrughan Isser vs. Sabnjpari & Ors.** to buttress the above submissions.

5. Besides, it is contended that the Suit as filed is barred by law of limitation. Article 120 of the Limitation Act requires filing of Suit within twelve years from the date when the right to sue accrues. According to the Defendants, the right to sue will accrue, if at all, in favour of the Plaintiff in the year 1952 when the registered Partition Deed came into effect. No share has been allotted to the predecessor of the Plaintiff under

the said Partition arrangement arrived at by the co-parceners of late Ganpatrao K.Mhatre. The suit instead, has been filed in the year 2004 which is clearly barred by law of limitation. Reliance is placed on the decision reported in **(2004) 12 SCC 754 in the case of Krishna Pillai Rajasekharan Nair (Dead) By LRs. vs. Padmanabha Pillai (Dead) By LRs. & Ors.** In Paragraph 22 of this decision, the Apex Court has observed that for a suit for partition, the starting point of limitation is - when the right to sue accrues, that is, when the Plaintiff has notice of his entitlement to partition being denied. Relying on the above submissions, Counsel for the Defendants contends that the Plaint will have to be rejected.

6. Counsel for the Plaintiff, however, submits that the daughter-in-law of Revati Goregaonkar was entitled to claim 1/27th right in the property. This is so because Revati Goregaonkar would inherit the property of Saraswati after her death in 1948. Saraswati, according to the Plaintiff, had 1/3rd share in the property left by Late Ganpatrao Mhatre, which came to her as

Streedhan property. If the said property came to the share of Saraswati as Streedhan, by virtue of clause 147, Revati Goregaonkar would succeed to the said property held by Saraswati. This is the only argument canvassed on behalf of the Plaintiff to resist the stand taken on behalf of the Defendants.

7. After having considered the rival submissions, I have no hesitation in taking the view that on the admitted facts on record, it would necessarily follow that in law, Plaintiff has no right in the suit property, for which reason, there will be no cause of action for the Plaintiff to institute suit and claim relief as has been pressed into service in the present Suit.

8. I am in agreement with the submissions canvassed on behalf of the Defendants that after the death of Ganpatrao K.Mhatre on 30th April 1947 Saraswati being widow succeeded along with other co-parcener; and had women’s estate in the property with limited right. On her death, her interest reverted in favour of the co-parceners who are the next heirs of her husband Ganpatrao Mhatre.

This legal position is expounded in the decision of the Apex Court in **Satrughan’s case (supra)**. The Apex Court has considered the purport of Hindu Women’s Right to Property Act (18 of 1937). In paragraph 4 of the said decision, the Apex Court has observed that the Act in investing the widow of a member of the coparcenary with the interest which the member had at the time of his death has introduced changes which are alien to the structure of a coparcenary. The interest of the widow arises not by inheritance, nor by survivorship, but by statutory substitution. The Apex Court has adverted to its earlier decision in Lakshmi Perumallu vs. Krishnavenamma reported in A.I.R. 1965 S.C. 825 in support of the said exposition. The Apex Court then went on to observe that the interest of the widow in the property is the "limited interest" known as Hindu Woman’s Estate. Indeed, the Act gives her the same power to claim partition as the male owner has. We are not concerned with that aspect of the matter. Suffice it to observe that the interest of the widow is limited interest known as a Hindu Woman’s Estate.

9. In 16th edition of Mulla on Hindu Law, at page 104, the efficacy of widow's estate has been adverted to. It is observed that a widow takes only a limited interest called widow's estate in the estate of her husband. On her death, the estate does not go to her heirs, but to the next heirs of her husband, technically called reversioners. She is entitled only to the income of the property inherited by her during her life time. She has no power to dispose of the corpus of the property except in certain cases. The Apex Court in Paragraph 7 of the abovenoted case, had occasion to deal with this legal position.

10. In other words, Saraswati had limited interest in the property, which prevailed till 8th August 1948. On her death, the limited interest reverted to the next heirs of Late Ganpatrao Mhatre. It is seen from the record that the sons of Ganpatrao Mhatre namely Shamrao, Chandrakant, Suryakant, thereafter effected partition in 1952 by a document which is a registered Partition Deed. As the legal position obtained at the relevant time in 1952, Revati Goregaonkar, the daughter of

Ganpatrao and Saraswati, would not inherit the property after the death of Ganpatrao and Saraswati. It necessarily follows that Revati could not have questioned the partition effected between Shamrao, Chandrakant and Suryakant. As Ashok is claiming through Revati and Jayashree, who in turn, is claiming through Ashok, cannot claim better right than the one possessed by Revati.

11. Suffice it to observe that the alternative plea taken by the Plaintiff that Saraswati had 1/3rd share to which the Plaintiff would inherit through Ashok and Revati, also will have to be rejected in view of the reason already recorded above, relying on the decision of the Apex Court in **Satrughan's case (supra)**.

12. Accordingly, I find substance in the argument that the Plaint does not disclose any cause of action to enable Plaintiff to institute Suit for partition in respect of the suit property. If it is so, the Defendants are justified in asking rejection of plaint in terms of provisions of Order

VII Rule 11(d) of the Code.

13. I am also in agreement with the objection taken on behalf of the Defendants regarding the prosecution of the suit as presented. The plaint is clearly barred by law of limitation. The cause of action to claim partition, from the admitted facts on record, would clearly arise in 1952 when the predecessor of Plaintiff was denied right in the suit property with the registered Partition Deed effected between Shamrao, Chandrakant and Suryakant. Revati who was directly affected by such action, did not question the Partition Deed during her life time i.e. up to 1984. Even Ashok, who was the son of Revati did not take up the issue during his life time. The present Suit instead, has been filed by the widow of Ashok only in the year 2004. In other words, the plaint as instituted, is palpably barred by law of limitation. Accordingly, on the admitted facts on record in terms of order VII Rule 11(a) of the Code, the plaint will have to be rejected. Ordered accordingly.

A.M.KHANWILKAR, J.